

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

vs.

01-CR-259

JENNIFER R. JOHNSON,

Defendant.

APPEARANCES:

OF COUNSEL:

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Asst. Federal Public Defender

DAVID N. HURD
United States District Judge

MEMORANDUM-DECISION AND ORDER

I. INTRODUCTION

Defendant Jennifer R. Johnson ("Johnson" or "defendant") has filed a motion with regard to the above-captioned action. Johnson is charged in an four count indictment (the "indictment") with transporting illegal aliens for private financial gain on June 14, 2001, in violation of 8 U.S.C. § 1324(a)(1)(B).

Johnson has moved for an order seeking the suppression of evidence obtained as a result of a traffic stop by agents of the United States Border Patrol (the "Border Patrol"). The government has opposed the motion. Oral argument was heard on August 10, and an evidentiary hearing was held on August 21, 2001 in Utica, New York. Decision was reserved.

II. FACTS

On June 14, 2001, Johnson was traveling southbound in her personal vehicle on U.S. Route 11 ("Route 11") in the town of Antwerp, New York, when she was stopped at a temporary checkpoint of the Border Patrol. The checkpoint was established at a location on Route 11 that was slightly south of the confluence of two major routes leading south from the U.S.-Canadian border, and this location was used on numerous occasions by the Border Patrol for the establishment of a checkpoint. The checkpoint was marked by traffic cones, signs, flashing lights, and floodlights, and was manned by uniformed Border Patrol agents.

At the time Johnson was stopped at the checkpoint, she had four male passengers in the vehicle with her. Border Patrol agents inquired of her citizenship, her destination, and her relationship with her passengers. She responded that she was a United States citizen, that she had met her passengers in the St. Regis Mohawk Indian casino, and that she was driving them to Syracuse, New York.

The agent then asked Johnson's front passenger what his nationality was, and the passenger answered, nervously and in broken English, that he was an American. Based upon the time and route of travel, number of occupants, and responses given, the agent directed Johnson to drive her vehicle to a second area for further questioning. Once

directed to the secondary inspection area, both Johnson and her passengers readily confessed that each man had paid her \$250 Canadian to transport them from the border to the Regional Transportation Center in Syracuse.

III. DISCUSSION

Johnson seeks suppression of evidence obtained as a result of a traffic stop at a temporary checkpoint established by agents of the Border Patrol on Route 11 in Antwerp, New York. She argues that the traffic stop was illegal because (a) the checkpoint was not the “functional equivalent” of a border search; and (b) the stop was not otherwise made upon reasonable suspicion.

In United States v. Martinez-Fuerte, 428 U.S. 543 (1976), the Supreme Court addressed the constitutionality of checkpoints operated by the Border Patrol. In Martinez-Fuerte, the Court held that the brief detention of a vehicle at a fixed checkpoint constitutes a “seizure” for purposes of the Fourth Amendment, but that a brief questioning of its occupants pursuant to such stop, for the purpose of ascertaining citizenship or immigration status, may be conducted without any particularized suspicion that the vehicle may contain illegal aliens. Id. at 556-58.

In support of its conclusion, the Court noted that

Our previous cases have recognized that maintenance of a traffic-checking program in the interior is necessary because the flow of illegal aliens cannot be controlled effectively at the border. We note here only the substantiality of the public interest in the practice of routine stops for inquiry at permanent checkpoints, a practice which the Government identifies as the most important of the traffic-checking operations. These checkpoints are located on important highways; in their absence such highways would offer illegal aliens a quick and safe route into the interior. Routine checkpoint inquiries apprehend many smugglers and illegal aliens who succumb to the lure of such highways. And the prospect of such inquiries forces others onto less efficient roads that

are less heavily traveled, slowing their movement and making them more vulnerable to detection by roving patrols.

A requirement that stops on major routes inland always be based on reasonable suspicion would be impractical because the flow of traffic tends to be too heavy to allow the particularized study of a given car that would enable it to be identified as a possible carrier of illegal aliens. In particular, such a requirement would largely eliminate any deterrent to the conduct of well-disguised smuggling operations, even though smugglers are known to use these highways regularly.

Id. (internal citation omitted). In subsequent cases, the Court has not drawn any substantive difference between permanent and temporary checkpoints. See Michigan Dept. of State Police v. Sitz, 496 U.S. 444, 450-53 (1990).

In contrast to checkpoint stops, a stop of a vehicle by a roving patrol must be based on specific articulable facts that reasonably warrant suspicion. United States v. Brignoni-Ponce, 422 U.S. 873 (1975). This is so because the circumstances surrounding a roving patrol stop are far more intrusive than those associated with a checkpoint stop. Unlike a checkpoint, “roving patrols often operate at night on seldom-traveled roads, and their approach may frighten motorists. At traffic checkpoints the motorist can see that other vehicles are being stopped, he can see visible signs of the officers' authority, and he is much less likely to be frightened or annoyed by the intrusion.” Id. at 894-895.

Johnson’s argument is that the vehicle stop in this case was a “roving patrol” and not a “temporary checkpoint” as the Government contends. Her argument is not supported by the evidence. The following facts, which were introduced without contradiction at the evidentiary hearing on this motion, demonstrate that the checkpoint at which Johnson was stopped was a “temporary checkpoint” within the meaning of Martinez-Fuerte. First, the checkpoint was established at a fixed location that was used on repeated occasions by the Border Patrol. Second, the location of the checkpoint was

announced by traffic control devices - including signs, lights, and traffic cones. Third, the checkpoint was not established to intercept any particular individual. All southbound travelers were required to pass through the checkpoint.

All of the relevant factors demonstrate that the vehicle stop in this case occurred at a temporary immigration checkpoint within the meaning of Martinez-Fuerte. As such, it is held that the checkpoint was lawful, and the evidence obtained pursuant to the stop of Johnson's vehicle may not be suppressed on the basis urged by defendant.

IV. CONCLUSION

For the aforementioned reasons, it is

ORDERED that

1. The defendant's motion for an Order suppressing the evidence obtained pursuant to the stop of her vehicle on June 14, 2001 is DENIED; and it is further

ORDERED that

2. The trial for this matter will commence on November 26, 2001 at 9:30 a.m. in Utica, New York; and

3. The following pretrial submissions must be filed with the Clerk's office in Utica, New York by November 16, 2001:

- a. Proposed voir dire questions;
- b. Requests to charge;

- c. Memoranda of law;
- d. Witness list; and
- e. Exhibit list.

IT IS SO ORDERED.

United States District Judge

Dated: October 18, 2001
Utica, New York.